

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Bail Appl.No. 4533 of 2007()

CRIME NO. 376/07 OF KOTTIYAM POLICE STATION
CRMP.2338/2007 of D.C. & SESSIONS COURT,KOLLAM
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PETITIONER/1ST ACCUSED:

P. ABDUL GAFOOR,
PUTHEN VEEDU, KANNANALLOOR P.O.,
THRIKKOVILVATTOM VILLAGE, KOLLAM.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS: COMPLAINANT:

THE SUB INSPECTOR OF POLICE,
KOTTIYAM POLICE STATION, KOLLAM, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 27/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A.No. 4533 of 2007

Dated this the 27th day of July, 2007

ORDER

Application for anticipatory bail. Petitioner is the first accused. He is the licensee of an authorised ration depot. The crux of the allegations is that on the night of 30.6.2007 at about 8 p.m. one bag of ration rice was allegedly removed from the ration shop of the petitioner in an autorikshaw to the provisions shop of the second accused. The vigilant local people allegedly obstructed the autorikshaw. The driver made a clear statement that the bag of rice was being carried from the shop of the petitioner to the shop of the second accused. The autorikshaw driver allegedly explained that the accused persons had run away. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has political moorings. On account of political animosity such false allegations are being raised.

There is no shortage of ration rice in his shop. In these circumstances anticipatory bail may be granted to the petitioner, prays the learned counsel.

3. The learned Prosecutor opposes the application. He submits that circumstances clinchingly indicate that the allegations against the petitioner are true. At any rate, there are no circumstances justifying invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. submits the Prosecutor.

4. I find merit in the opposition raised by the Prosecutor. I am satisfied that there are no features in this case which which would justify or permit this Court to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is an eminently fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. The fact that the precise section quoted is not correct is irrelevant at the moment. It cannot possibly be contended that the allegations do not constitute a non-bailable offence.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the

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Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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